

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Sections 3664, 3665, 3666, 3667, 3668, and 3669

GRAPEVINE LOSS ASSISTANCE PROGRAM

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations are Intended to Address

This regulation is intended to address the obligations of the Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of these regulations is to establish the Grapevine Loss Assistance Program including the purpose, application process, eligibility criteria, application review and eligibility determination, payment criteria, and appeal/hearing procedures. This program will provide a maximum aggregate \$7.14 million in payments to eligible vineyard owners who incur losses due to Pierce's disease spread by the glassy-winged sharpshooter. The effect of the regulation is to provide authority for the State to compensate eligible vineyard owners to assist California's agricultural industry.

The factual basis for the determination by the Department that amendment of this regulation was necessary is as follows:

The Legislature has found and declared that Pierce's disease and its vectors present a clear and present danger to the State's grape industry, other agricultural commodities and plant life, and has enacted legislation mandating action to minimize the destructive impact of Pierce's disease and its vectors at the earliest possible time. In addition, the Governor recognized the immediate threat posed by the glassy-winged sharpshooter

(GWSS), *Homalodisca coagulata*, in requesting that the United States Department of Agriculture declare a state of emergency under federal law. The federal declaration of emergency was published in the Federal Register on July 7, 2000, with an effective date of June 23, 2000.

The glassy-winged sharpshooter is not a native insect pest in California and its introduction to this State is relatively recent. First observed in California in 1990, the GWSS has now infested Southern California and parts of other counties in Central and Northern California. GWSS is a very efficient vector of Pierce's disease of grapevines. This destructive disease initially reduces grape production and usually results in the death of the grapevine. On August 10, 1999, the County of Riverside declared a local emergency because of the spread of Pierce's disease and the GWSS. On June 20, 2000, Public Law 106-224 (Section 203, Agricultural Protection Act of 2000) provided federal funds to compensate growers for losses due to Pierce's disease.

The United States Department of Agriculture (USDA), Farm Service Agency, published a notice in the Federal Register (Vol. 86, No. 160) on August 17, 2001, stating that "it appears specifically that it was the intent of Congress that \$7 million be made available to the State of California" to cover losses due to Pierce's disease. The notice also specified that \$7.14 million be made available to the State for losses resulting from Pierce's disease infection spread by the glassy-winged sharpshooter; that the funds be made available directly to the State; and that the State would decide how it would distribute the funds among affected growers.

In September 2001, the USDA and the Department signed the "Agreement Between the United States Department of Agriculture and the State of California for the Purpose of Compensating Growers for Grape Vine Losses from Pierce's Disease" and the \$7.14 million were transferred to the State. On January 15, 2002, the Department submitted draft criteria for implementation of the vine loss compensation program as per the agreement. On March 6, 2002, the USDA determined that the Department's proposed method to administer this program does not conflict with the agreement.

On April 6, 2002, Governor Gray Davis signed An Act Relating to the Glassy-winged Sharpshooter (Stats. 2002, AB1242, Chapter 18, Urgency Statute) that appropriates \$7.14 million in federal funds (available to the

Department) to the Department of Food and Agriculture to be distributed to compensate grape growers, for vine losses resulting from Pierce's disease spread by glassy-winged sharpshooter, in accordance with criteria established by the Department. The act also provides that the Department may retain a maximum of five (5) percent of the federal allocation to cover administrative expenses directly related to the program, including departmental overhead and third-party verification.

The Department of Food and Agriculture adopted Sections 3664, 3665, 3666, 3667, 3668, and 3669 to implement a program to provide assistance to vineyard owners with losses due to Pierce's disease spread by the glassy-winged sharpshooter. Immediate adoption of these regulations and implementation of a statewide program were actions necessary to compensate these vineyard owners for grapevine losses as soon as possible and within the time frames set in the agreement between the USDA and the Department.

To provide compensation to eligible vineyard owners in California, it was necessary to immediately establish the Grapevine Loss Assistance Program and the criteria for application, eligibility, and payment of an aggregate of \$7.14 million to growers. Therefore, it was necessary to adopt Sections 3664 through 3669 on an emergency basis.

Article 5, Grapevine Loss Assistance Program, established a program to compensate eligible vineyard growers for grapevine losses due to Pierce's disease spread by the glassy-winged sharpshooter. Section 3664, Purpose, established that the purpose of the Grapevine Loss Assistance Program (GVLAP) is to provide a maximum aggregate \$7.14 million in payment to eligible vineyard owners who incur losses due to Pierce's disease spread by the glassy-winged sharpshooter.

Section 3665, Application for GVLAP Form GWSS-003 (March 1, 2002), established the form and source, submission procedures, required documents, application due date of June 1, 2002, and provides for access to the property and specific records by the Department.

Section 3666, Eligibility, established the eligibility/payment authorization requirements that apply to the GVLAP as: compensation of grape growers only for grapevine losses resulting from Pierce's disease spread by the glassy-winged

sharpshooter, not for grape production losses or for the cost of replanting grapevines; compensation payments shall be based on vineyard establishment cost, or a portion thereof, in the county in which the vineyard is located; grapevine removal shall have been conducted as a result of infection by Pierce's disease spread by the glassy-winged sharpshooter; each removed vineyard acre must have a minimum of 30 percent infection per contiguous acre; vineyards must have been removed on or after August 10, 1999; vineyards must have been removed on or before May 1, 2002; and documentation must be provided to confirm that the grapevine removal was due to infection by Pierce's disease spread by the glassy-winged sharpshooter. Section 3666 also established the confirmation and certification procedures to be used to affirm the Pierce's disease infection of the grapevines removed.

Section 3667, Application Review and Eligibility Determination, established that, after receipt and review of each application, the county agricultural commissioner shall forward his/her recommendation regarding vineyard eligibility for compensation and the application, accompanied by all required documentation, to the Department's Pierce's Disease Control Program (program). This section also established that the program shall review the application and information submitted for completeness and verification prior to the final determination of vineyard(s) eligibility. Section 3667 also established that the program shall provide written eligibility determinations to the applicant(s) by September 30, 2002, and identify the payment date(s).

Section 3668, Payment Criteria, established that the minimum acreage criterion is one (1) contiguous acre of removed vines demonstrating at least 30% infection rate per acre; that vineyards that were removed after two (2) years of age and prior to ten (10) years of age will be compensated at the adjusted compensation rate per acre; that the adjusted compensation rate per acre will be calculated using the average cost of vineyard establishment (planting and development costs for the first five [5] years of vineyard age) for the areas affected prorated on the basis of total qualified acreage determined by the Department; and that the maximum rate of compensation for grapevine losses shall not exceed the estimated cost to establish a like vineyard, or portion thereof, in the county in which the vineyard is located. This section also established deductions for vineyard age from the adjusted compensation rate per year per acre; that if the total amount of applications for compensation exceeds the available funds, payments shall be reduced by a uniform percentage to match the available funds; that owners accepting vine loss compensation funds from the Department for the acreage claimed are prohibited from reapplying for vine loss compensation from the Department for the same acreage; and that compensation limits per acre and pro-rata reimbursement levels will be calculated as a function of total qualified acreage at the end of the qualifying period. Section 3668 also established

that if the Department or United States Department of Agriculture determines that any provisions of the application, or of the rules and regulations governing the program have not been complied with by the owner receiving compensation, noncompliance may result in the owner not being entitled to any additional payments, the owner refunding any payments made in connection with the compensation program, and owner liability for any other damages incurred as a result of such non-compliance.

Section 3669, Appeal/Hearing Procedures, established the procedures for an appeal of an eligibility decision relative to a compensation application; the hearing procedures, that the hearings shall be presided over and conducted by a hearing officer designated by the Secretary, that decision shall be issued within 24 hours after the conclusion of the hearing; and that the hearing officer's decision shall be final and not appealable to the Secretary or any other officer of the Department.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Sections 3664 through 3669 do impose a mandate on local agencies, but not on school districts. Reimbursement will be made for costs resulting from this mandate from the \$357,000 (maximum) allocated for this purpose.

The Department has also determined that the regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and no costs or savings in federal funding to the State.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

The types of businesses that may be impacted are eligible grapevine vineyard owners to whom a maximum aggregate \$7.14 payment million for losses incurred due to Pierce's disease spread by the glassy-winged

sharpshooter may be made.

Assessment

The Department has made an assessment that the proposed regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the adoption of Sections 3664 through 3669:

“Urgent Action to Combat the Spread of Pierce’s Disease in Local Vineyards,” Riverside County Board of Supervisors, Declaration of Local Emergency, August 10, 1999, with attachments, eight pages.

Public Law 106-224, June 20, 2000, 114 Stat. 400, (e) Grower Compensation, one page.

“Income Assistance for Grape Vine Losses Due to Pierce’s Disease,” Federal Register, Vol. 86, No. 160, August 17, 2001, pages 43177-43178.

“Agreement Between the United States Department of Agriculture and the State of California for the Purpose of Compensating Growers for Grape Vine Losses from Pierce’s Disease,” August 19, 2001, three pages.

Memorandum of March 6, 2002 to Robert L. Wynn, Jr. from Diane Sharp, with attachments, 13 pages.

Letter of November 16, 2001 to Chris Stevens from Thomas V. Conway, with attachments, five pages.

“Governor Davis Announces \$7.14 Million to Aid Grape Growers,” Press Release PR02:181, April 8, 2002, one page.

Assembly Bill No. 1242, signed by Governor Davis April 6, 2002, filed with Secretary of State April 8, 2002, Chapter 18(u), two pages.

“Projected Grower Compensation for the Grapevine Loss Assistance Program,” California Department of Food and Agriculture, Pierce’s Disease Control Program, 2-21-02, three pages.

“Sample Costs to Establish a Vineyard – 2000/2001,” J. Hashim, UCCE Viticulture Farm Advisor, Kern County, three pages.

“Economic Analysis of Wine Grape Establishment and Production, Temecula, California 1995-1997,” University of California Cooperative Extension Riverside County, 33 pages.

“Sample Costs to Establish a Vineyard and Produce Wine Grapes,” 1996, University of California Cooperative Extension, Santa Maria Valley, Santa Barbara County, 21 pages.

“Establishment of a 30% Infection Level for GVLAP,” Email of March 29, 2002 to Barbara Hass from Bob Wynn, one page.

“P.D./GWSS Phone Calls by Jennifer Heald,” California Department of Food and Agriculture, December 2001, four pages.

“Application for Grapevine Loss Assistance Program,” Form GWSS-003, March 1, 2002, two pages.

“Request for Taxpayer Identification Number and Certification,” Form W-9, Department of the Treasury, Internal Revenue Service, Rev. January 2002, six pages.